



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/171720

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 27, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 23, 2016, at Milwaukee, Wisconsin.

The issues for determination are whether Milwaukee Enrollment Services (the agency) has correctly implemented a tax intercept and whether Petitioner's appeal of the underlying overpayment is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], HSPC, Sr.  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) used to receive Foodshare benefits in Wisconsin.
2. On August 18, 2015, the agency sent the Petitioner a FoodShare Overpayment Notice, indicating that she had been overpaid \$530.00 in FoodShare benefits, because she trafficked the benefits between November 6, 2012 and January 31, 2013. This notice was sent to the Petitioner at the

████████████████████, which is used for individuals who claim to be homeless. (Exhibit 8; Testimony of ██████████)

3. The agency believes the Petitioner sold her benefits to ██████████ during the time in question. (Testimony of ██████████)
4. On September 2, 2015, the agency sent the Petitioner a repayment agreement. The notice was sent to the ██████████. (Exhibit 9)
5. On October 5, 2015, November 3, 2015 and December 2, 2015, the Public Assistance Collections Unit (PACU) sent the Petitioner dunning notices, or reminders about the debt. The first notice was sent to the ██████████, the last two notices were sent to the Petitioner at her current address. (Exhibit 10; Testimony of Petitioner)
6. On January 15, 2016, PACU sent the Petitioner a notice, advising her that it was going to intercept her state taxes to satisfy the debt. (Exhibit 11)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 27, 2016. (DHA File)

### DISCUSSION

#### *The Tax Intercept Issue*

Petitioner filed an appeal to contest the use of a tax intercept. The preponderance of the credible evidence shows that the agency correctly implemented the tax intercept.

- 1) A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8.

The agency did this; it sent the Petitioner overpayment notices on August 18, 2015 and it sent him a repayment agreement on September 2, 2014.

- 2) If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The Petitioner does not dispute the fact that she did not make any payments toward the debt, because she claims that she never had any knowledge about it. As such, PACU issued dunning notices to the Petitioner on October 5, 2015, November 3, 2015 and December 2, 2015.

It is clear that the agency exercised some diligence in sending the notices to the Petitioner at her last known address, given that they made an effort to keep up with the changes in her address.

- 3) To use a tax intercept, the person must have received three or more dunning notices. *FoodShare Wisconsin Handbook* §7.3.2.10 As discussed above, the agency sent the Petitioner three dunning notices in October, November and December 2015.
- 4) To use a state tax intercept the debt must be:
  1. Valid and legally enforceable.
  2. At least \$20;
  3. State: At least 30 days from notification of Overissuance;
  4. Free from any current appeals.
  5. Incurred by someone who has not filed bankruptcy, nor has their spouse.

*FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept*

There is nothing in the record to suggest the debt is not valid or legally enforceable; it is over \$20.00; the tax intercept notice was issued more than 30 days after the agency issued the overpayment notice; there were no appeals of the underlying overpayment and there is no indication that either the Petitioner filed for bankruptcy.

- 5) The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. See also §49.85(3). The agency sent the Petitioner a notice of tax intercept on January 15, 2015.

Based upon the foregoing, it is found that the agency took the proper steps to implement a tax intercept.

*The Underlying Overpayment*

The Petitioner also wanted to appeal the underlying overpayment, claiming that her cousin [REDACTED] used her EBT card and sold her benefits to [REDACTED]. While one might question the credibility of Petitioner's claim, there is no jurisdiction to review the merits of Petitioner's appeal of underlying overpayment.

The Petitioner argues that her appeal of the underlying overpayment should be considered timely, because she did not get the notices. However, the Petitioner testified that she did not check her mail at the [REDACTED] [REDACTED] even though she reported being homeless and agreed to receive her mail at the [REDACTED]. The Petitioner cannot claim a failure to give proper notice, when the notices were sent to the correct address, but she didn't even check her mail with any regularity.

The agency sent the overpayment notice to Petitioner's last known address in August 2015. As such, she had 90-days to file an appeal. 7 CFR 273.15(g); See also *FoodShare Wisconsin Handbook (FSH) §6.4.1.1* That appeal deadline fell in November 2015. Petitioner's appeal was not filed until January 2016. As such, her appeal of the underlying overpayment is untimely and there is no jurisdiction to review the merits of the underlying overpayment.

**CONCLUSIONS OF LAW**

- 1) The agency correctly implemented a tax intercept.
- 2) Petitioner's appeal of the underlying overpayment is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 14th day of March, 2016

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 14, 2016.

Milwaukee Enrollment Services  
Public Assistance Collection Unit